serious question. Even upon a domestic corporation, a personal tax based on property without the jurisdiction is invalid.[12]

The business done is a legitimate subject for taxation,[13] but a tax based on capital stock has no relation to the business done within the state. With a corporation doing a large interstate business, such a tax might be more than the receipts of the business itself. It would seem, therefore, on the reasoning suggested, that the result in the principal case is incorrect.

RECENT CASES.

ADVERSE POSSESSION — AGAINST WHOM TITLE MAY BE GAINED — RAILROAD COMPANY. — The plaintiff maintained, for more than the statutory period, a building which was an encroachment on the right of way of the defendant railway company. *Held*, that no title was acquired thereby. *Conwell* v. *Philadelphia & R. Ry. Co.*, 88 Atl. 417 (Pa.).

Where a railroad's right of way is limited to an easement over property the fee of which is vested in the sovereign, no title to the land can be acquired by adverse possession because of the public policy which excepts the sovereign's land from the operation of the Statute of Limitations. *Union Pac. Ry. Co.* v. *Kindred*, 43 Kan. 134, 23 Pac. 112; *Kindred* v. *Union Pac. R. Co.*, 168 Fed. 648. A like result is reached when the railroad is built on land in which the government, as grantor, has a possibility of reverter. *Union Pac. Ry. Co.* v. *Townsend*, 190 U. S. 267; *McLucas* v. *St. Joseph & G. I. Ry. Co.*, 67 Neb. 603, 97 N. W. 312. The principal case goes a step further by holding that a railroad right of way, as such, is exempt from the operation of the statute. The result is justified by the vital public interest in railroads which makes it fair to say that land devoted to their rights of way or terminal facilities is impressed with a public use. See *Hannibal & St. J. R. Co.* v. *Totman*, 149 Mo. 657, 662, 51 S. W. 412, 413. Little support is found to-day for the position taken by one court in reaching a conclusion contrary to the principal case, that railroads are operated primarily for the benefit of their stockholders. See *Pittsburgh, C. C. & St. L. Ry. Co.* v. *Stickley*, 155 Ind. 312, 315, 58 N. E. 192, 193. The Statute of Limitations being no more than a rule of policy for the repose of titles, it seems correct to recognize an exception to it when, as here, the countervailing policy of the preservation of public rights is involved. No exemption is claimed for the general corporate property of the railroad. *Delaware, L. & W. R. Co.* v. *Tobyhanna Co.*, 228 Pa. 487, 77 Atl. 811. And it is submitted that cases holding that land originally secured for use as a right of way, but subsequently abandoned, may be acquired by adverse possession, are not inconsistent with the principal case. *Spottiswoode* v. *Morris & E. R. Co.*, 61 N. J. L. 322, 40 Atl. 505. Such property was obviously unnecessary for the performance of the public duty.

ALIENS — NATURALIZATION OF ALIENS — WHO IS A "FREE WHITE PERSON" WITHIN FEDERAL NATURALIZATION LAW. — The plaintiff applied for naturalization as a white person, maintaining that as a high caste Hindu of pure blood he was a member of the Aryan race. *Held*, that he is entitled to naturalization. *In re Akhay Kumar Mozumdar*, 207 Fed. 115 (Dist. Ct., E. D. Wash., N. D.).

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[12] Union Transit Co. *v.* Kentucky, 199 U. S. 194.

[13] See State Tax on Foreign Held Bonds, 15 Wall. (U. S.) 300, 319.

Former cases have held a Syrian, an Armenian, and a Parsee entitled to naturalization as "free white persons." See 23 HARV. L. REV. 561; 24 HARV. L. REV. 150. The principal case follows from those. The argument is that the phrase employed by the statute is merely a "catch-all" for others than negroes and Indians; that Mongolians and Asiatics have been excluded by judicial construction; and hence that all Europeans and Asiatics not allied to those races are eligible. See 23 HARV. L. REV. 561.

BILLS AND NOTES — SET-OFF BY SURETY MAKER OF PROMISSORY NOTE AGAINST INSOLVENT BANK. — During insolvency proceedings against the defendant bank, the appellant, a surety co-maker of a promissory note payable to the bank, filed an intervening petition seeking to have her deposit set off in payment of the note. The principal maker of the note was solvent. *Held*, that the petition be denied. *Knaffle* v. *Knoxville Banking & Trust Co.*, 159 S. W. 838 (Tenn.).

The court in the principal case assumes that at law the maker of a note is absolutely liable thereon irrespective of a suretyship relation, and such has been the construction placed by the courts on §§ 119, 120, and 192 of the Negotiable Instruments Law. *Vanderford* v. *Farmers' Bank*, 105 Md. 164, 66 Atl. 47; *Cellers* v. *Meachem*, 49 Ore. 186, 89 Pac. 426; *contra*, *Fullerton Lumber Co.* v. *Snouffer*, 139 Ia. 176, 117 N. W. 50. See 26 HARV. L. REV. 366. This construction seems questionable, and certainly the result is undesirable as doing away with the established common-law suretyship defenses. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 117; 11 Am. Law Notes, 105. If the above construction were adopted in the principal case, the appellant, being absolutely liable, should be allowed the well-recognized right to an equitable set-off against an insolvent creditor. See WATERMAN, SET-OFF, RECOUPMENT, AND COUNTER CLAIM, § 396. But the court holds that, irrespective of the effect of the statute on the liabilities of the parties at law, a court of equity can consider the true relation between the parties. *Building and Engineering Co.* v. *Northern Bank*, 206 N. Y. 400, 99 N. E. 1044. This reasoning seems unsound, as statutes are to be considered as framed with reference to equitable as well as legal doctrines, unless otherwise expressly stated. See *Edwards* v. *Edwards*, 2 Ch. D. 291, 297; ENDLICH, INTERPRETATION OF STATUTES, 446. It seems probable that the court, in using this language, is indirectly disagreeing with the above generally accepted construction. But if the common construction is incorrect and the common-law doctrines of suretyship are not abolished, the fact that the supreme courts of six states have decided otherwise, and that three states, Wisconsin, Illinois, and Kansas, have refused to adopt the sections in question in their present form, would seem to make an amendment of these sections imperative. See 26 HARV. L. REV. 594–596.

CARRIERS — PASSENGERS: DUTY TO ACCEPT AND CARRY PASSENGERS — RIGHT OF SICK PASSENGERS TO DEMAND TRANSPORTATION IN BAGGAGE CAR. — The plaintiff's intestate offered himself to the defendant for transportation to Atlanta where he was to undergo an operation for appendicitis. He was upon a cot and demanded the right to be placed in the baggage car. The defendant refused, and the deceased was taken into the smoking car, in which it was impossible to place him in other than a cramped position. This resulted in the bursting of the appendix, causing his death. *Held*, that the plaintiff may not recover. *Central of Georgia Ry. Co.* v. *Fleming*, 79 S. E. 369 (Ct. App., Ga.).

The plaintiff argued that the defendant owed a duty to the deceased to carry him in the baggage car. There is almost no authority on the question. Where a person is unattended and so seriously ill as to require medical aid, it was held that the carrier might refuse transportation altogether. *Connors* v. *Cunard Steamship Co.*, 204 Mass. 310, 90 N. E. 601. There, however, the carrier's re-